THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.28199 OF 2005

DATED 07th FEBRUARY, 2006

BETWEEN

G.Sanjeeva Reddy, S/o G.Bagi Reddy and others

… Petitioners

and

The District Panchayat Officer,

Ranga Reddy District and others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.28199 OF 2005

ORDER:

The three petitioners are residents of Srinidhi Enclave in Shivareddyguda village of Ghatkesar Mandal in Ranga Reddy District. They own houses in the said locality. They allege that the fourth respondent is claiming the road in the colony as plot Nos.9 and 67. He also filed a suit being O.S.No.812 of 2004 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District for injunction. He also filed I.A.No.1867 of 2004 against the first petitioner, two others and the third respondent herein. The said I.A., for injunction was dismissed by the trial Court on 09.02.2005. The fourth respondent filed C.M.A. No.21 of 2005 on the file of the Court of the Principal District Judge, Ranga Reddy District, which is pending. In the meanwhile, when the fourth respondent was making efforts for construction on the alleged road, the petitioners herein filed a suit being O.S.No.3065 of 2005 on the file of the Court of the Principal Junior Civil Judge, Ranga Reddy District against the fourth respondent for declaration and perpetual injunction, which is still pending. It is the further case of the petitioners that in the meanwhile the fourth respondent moved the first respondent seeking permission for construction of a house in plot Nos.9 and 67 in Ghatkesar Gram Panchayat. The first respondent by proceedings, dated 20.12.2005, directed the respondents 2 and 3 to take immediate necessary action for according construction permission to the fourth respondent as per Building Rules by collecting the fee. Aggrieved by the same, the present writ petition is filed.

The petitioners contend that the issue whether the road is being treated as plot Nos.9 and 67 is pending before the civil Court and therefore any permission for construction on the road would be illegal. According to the petitioners, when suit for declaration that the disputed land is a road, is pending, the first respondent ought not to have directed the second respondent to accord permission for construction.

The first respondent has filed a counter affidavit. It is stated that the first respondent entertained the application made by the fourth respondent as the Gram Panchayat kept the application pending for a long time, and after considering the same, directed the Gram Panchayat to accord permission as per Building Rules. It is further stated that the impugned order is only an advice to the Gram Panchayat. It does not amount to any building permission.

The Panchayat Secretary has filed a counter affidavit on behalf of respondents 2 and 3. While stating that the suit filed by the petitioner and the suit filed by the fourth respondent are pending, it is asserted that there is a pathway being used by the residents of Maruthi Nagar colony, that though the fourth respondent submitted an application on 06.12.2004 for construction of houses on plot Nos.9 and 67, the Gram Panchayat did not consider the application as civil cases are pending before the civil Courts. However, after the first respondent passed orders on 20.12.2005, the Gram Panchayat granted permission on 16.01.2006 to the fourth respondent.

The case of the fourth respondent as brought out in the counter affidavit is as

follows. He purchased plot No.9 admeasuring 267 square yards and plot No.67 admeasuring 208 square yards in Survey Nos.572, 573 and 574 (part) of Ghatkesar village under two separate sale deeds dated 25.02.2004 and 28.02.2004 respectively from N.Kondala Rao and N.Harish Kumar. Both the plots form part of the lay out sanctioned/approved by Hyderabad Urban Development Authority (HUDA) vide permit No.4036 of 1989. He made an application to respondents 2 and 3 for building permission but no action was taken thereon. Therefore, on 02.09.2004, he approached the first respondent to consider the application for construction of building. The first respondent conducted detailed enquiry and after satisfying himself that the plots are situated in the approved lay out of HUDA issued impugned proceedings directing respondents 2 and 3 to take immediate necessary action for according construction permission. Pursuant to the said proceedings, the third respondent issued proceedings, dated 16.01.2006, according sanction and approval for construction of houses. The fourth respondent denies the allegation that plot Nos.9 and 67 form part of the road. It is further stated that when the petitioners tried to obstruct the fourth respondent from entering into his lands, he filed O.S.No.812 of 2004 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District against first petitioner, and respondents 2 and 3 and obtained ad interim injunction. When the same was vacated, he filed C.M.A.No.21 of 2005 on the file of the Court of the Principal District Judge, Ranga Reddy District. By order dated 28.02.2005 in I.A.No.419 of 2005 in C.M.A.No.21 of 2005, the appellate Court granted interim injunction against the petitioners and is pending. It is further stated that the petitioners filed O.S.No.3065 of 2005 against the fourth respondent for declaration and perpetual injunction and no orders are passed thereon. The subject matter is a civil dispute and is pending in the civil Courts. Therefore, the writ petition is not maintainable. The fourth respondent also alleges that the petitioners' Srinidhi Enclave Colony is not in approved lay out and that the petitioners' plots are in the green belt area as per HUDA Regulations. The allegation that the fourth respondent is trying to convert the road into plots is denied.

The learned counsel for the petitioners submits that Section 121 of A.P.Panchayat Raj Act, 1994 (for short, the Act), Gram Panchayat is the authority to grant building permission and if any person is aggrieved by the same, the right of appeal lies before the District Panchayat Officer under Section 128(2) of the Act. When the fourth respondent approached the first respondent instead of sending the application to the Gram Panchayat for consideration, first respondent himself passed orders, which is illegal and arbitrary. Secondly, he submits that even while the suit filed by the petitioners for declaration that the land in question is a road, is pending, if the fourth respondent is allowed to construct residential houses on the plots which form part of the road, the same would be illegal. The learned Assistant Government Pleader for Panchayat Raj and the learned standing counsel for Panchayats submit that the first respondent only directed the Gram Panchayat to consider the application made by the fourth respondent and the impugned order cannot be treated as permission for construction of the building. The learned counsel for the fourth respondent submits that when the suit filed by the petitioners for declaration is pending, unless and until such declaration is granted, the land in occupation of the petitioners cannot be considered as a road. Secondly, he would submit that the plots

owned by the fourth respondent are situated in a lay out approved by HUDA and did not form part of the road.

In the background of the case and having regard to the rival submissions, the point that would arise for consideration is whether the impugned proceeding of the first respondent, dated 20.12.2005, suffers from any illegality. There cannot be any doubt that under Section 121 of the Act, no person is entitled to construct any building/house unless such person obtains a building permission from the Gram Panchayat. In this case, it is the case of the fourth respondent that he submitted application to Gram Panchayat and when the same was not considered, he approached the first respondent on 02.09.2004. This is not denied by the Gram Panchayat. It is contended by the Gram Panchayat that there were objections from the petitioners and others in locality that plot Nos.9 and 67 form part of the road, and therefore the plan was not considered. When the inaction on the part of the Gram Panchayat is reported, the first respondent was justified in directing the Gram Panchayat to consider the applications.

A reading of the impugned order suggests that the first respondent directed the Sarpanch/Panchayat Secretary to take immediate necessary action for according construction permission to fourth respondent as per Building Rules. The same cannot be considered as permission granted by the first respondent. No doubt, pursuant to the impugned proceedings, the Gram Panchayat granted building permission on 16.01.2006 duly referring to the proceedings of the first respondent. From the same, an inference cannot be drawn that the Gram Panchayat acted as per the dictates of the first respondent abdicating its statutory powers and functions. Insofar as the submission that the land under occupation of the fourth respondent is a public road as alleged, is concerned, admittedly the suit filed by the fourth respondent being O.S.No.812 of 2004 for perpetual injunction is pending on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District. Initially, the said Court granted ad interim injunction in I.A.No.1867 of 2004, which was subsequently vacated. The fourth respondent filed C.M.A.No.21 of 2005 and obtained ad interim injunction in I.A.No.419 of 2005, which is still in force. Not only that the suit filed by the petitioners being O.S.No.3065 of 2005 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District is pending. Admittedly, the suit was filed by the petitioners for declaration that suit schedule property therein be declared as public road. Unless and until, such declaration is granted by the civil Court, no finding can be recorded on the question raised by the petitioners. The petitioners and the fourth respondent have already approached the civil Court and it is not appropriate for this Court to entertain the writ petition on this question.

A reference may be made to the decisions of the Supreme Court in **K.S.Rashid v ITI Commission**, **Carl Still G.M.B.H. v State of Bihar** and **Jai Singh v Union of India**. In **K.S.Rashid v ITI Commission** (supra), a Constitution Bench of the Supreme Court held as follows.

So far as the second point is concerned, the High court relies upon the ordinary rule of construction that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which could be pursued. It is said that the Taxation on Income (Investigation Commission) Act, 1947, itself provides a remedy against any wrong or' illegal order of the Investigating Commission and under section 8 (5) of the Act, the aggrieved party can apply to the appropriate Commissioner of Income-tax to refer to the High court any question of law arising out of such order and thereupon the provisions of S. 66 and 66-A of the Indian Income-tax Act shall apply with this modification that the reference shall be heard by a bench of not less than three Judges of the High court. We think that it is not necessary for us to express any final opinion in this case as to whether section 8 (5) of the Act is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under article 226 of the Constitution. For purposes of this case it is enough to state that the remedy provided for in article 226 of the Constitution is a discretionary remedy and the High court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere.

In **Jai Singh v Union of India** (supra), the Supreme Court observed that when there are serious questions of disputed facts this Court need not exercise jurisdiction under Article 226 of the Constitution of India. It was observed therein thus:

The High court dismissed the writ petition on the ground that it involved determination of disputed questions of fact. It was also observed that the High court should not in exercise of its extraordinary jurisdiction grant relief to the appellant when he had an alternative remedy. After hearing Mr. Sobhagmal Jain on behalf of the appellant, we see no cogent ground to take a view different from that taken by the High court. There cannot, in our opinion, be any doubt on the point that the extent of purity of the gypsum won by the appellant is a question of fact. It has also been brought to our notice that after the dismissal of the writ petition by the High court, the appellant has filed a suit, in which he has agitated the same question which is the subject-matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.

In **Carl Still v State of Bihar** (supra), another Constitution Bench considered the question and held:

It is next contended for the respondents that, whatever the merits of the contentions based on the construction of the contract, the proper forum to agitate them would be the authorities constituted under the Act to hear and decide disputes relating to assessment of tax, that it was open to the appellants to satisfy those authorities that there have been no sales such as are liable to be taxed, that indeed they were bound to pursue the remedies under the Act before they could invoke the jurisdiction of the court under Art. 226 and that the learned Judges of the High court were, therefore, right in declining to entertain the present petitions. It is true that if a statute sets up a tribunal and confides to it jurisdiction over certain matters and if a proceeding is properly taken before it in respect of such matters, the High court will not, in the exercise of its extraordinary jurisdiction under Art. 226, issue a prerogative writ so as to remove the proceedings out of the hands of the

> tribunal or interfere with their course before it. But it is equally well settled that, when proceedings are taken before a tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the court under Art. 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.

In view of the pendency of the suits filed by the rival parties, no orders can be passed in this writ petition, especially when the Gram Panchayat has already granted permission in favour of the fourth respondent duly considering his application for grant of building permission. It shall, however, be open to the petitioners to obtain appropriate orders from the Civil Court in the suit filed by them if so advised.

The writ petition, with the above observations, is disposed of. No costs.

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(V.V.S.RAO,J)

07.02.2006.

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